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12 R. R. DONNELLEY & SONS COMPANY

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 R. R. DONNELLEY & SONS
16 COMPANY, a Delaware corporation,
17 Plaintiff,

18 v.

19 JOHN PAPPAS III, an individual, and
20 DOES 1-10,
21 Defendants.

Case No. 2:21-cv-00753-JAM-AC

**STIPULATED PROTECTIVE
ORDER**

ASSIGNED FOR ALL PURPOSES
TO JUDGE JOHN A. MENDEZ

22 1. A. PURPOSES AND LIMITATIONS

23 As the parties have represented that discovery in this action is likely to involve
24 production of confidential, proprietary, or private information for which special
25 protection from public disclosure and from use for any purpose other than
26 prosecuting this litigation may be warranted, this Court enters the following
27 Protective Order. This Order does not confer blanket protections on all disclosures
28 or responses to discovery. The protection it affords from public disclosure and use
extends only to the limited information or items that are entitled to confidential
treatment under the applicable legal principles. Further, as set forth in Section 12.3,
below, this Protective Order does not entitle the parties to file confidential
information under seal. Rather, when the parties seek permission from the court to

1 file material under seal, the parties must comply with Civil Local Rule 141 and with
2 any pertinent orders of the assigned District Judge and Magistrate Judge.

3 B. GOOD CAUSE STATEMENT

4 In light of the nature of the claims and allegations in this case and the parties'
5 representations that discovery in this case will involve the production of confidential
6 records, and in order to expedite the flow of information, to facilitate the prompt
7 resolution of disputes over confidentiality of discovery materials, to adequately
8 protect information the parties are entitled to keep confidential, to ensure that the
9 parties are permitted reasonable necessary uses of such material in connection with
10 this action, to address their handling of such material at the end of the litigation, and
11 to serve the ends of justice, a protective order for such information is justified in this
12 matter. The parties shall not designate any information/documents as confidential
13 without a good faith belief that such information/documents have been maintained in
14 a confidential, non-public manner, and that there is good cause or a compelling
15 reason why it should not be part of the public record of this case.

16 2. DEFINITIONS

17 2.1 Action: The instant action: R. R. Donnelley & Sons Company v. John
18 Pappas III.

19 2.2 Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.

21 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for protection
23 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
24 Cause Statement.

25 2.4 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY"
26 Information or Items: extremely sensitive "CONFIDENTIAL" Information or Items,
27 the disclosure of which to another Party or Non-Party would create a substantial risk
28 of serious harm that could not be avoided by less restrictive means.

1 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
2 their support staff).

3 2.6 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
6 ONLY.”

7 2.7 Disclosure or Discovery Material: all items or information, regardless
8 of the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.8 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as
13 an expert witness or as a consultant in this Action.

14 2.9 House Counsel: attorneys who are employees of a party to this Action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.10 Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.11 Outside Counsel of Record: attorneys who are not employees of a party
20 to this Action but are retained to represent or advise a party to this Action and have
21 appeared in this Action on behalf of that party or are affiliated with a law firm which
22 has appeared on behalf of that party, and includes support staff.

23 2.12 Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28 2.14 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying, videotaping, translating, preparing exhibits or
2 demonstrations, and organizing, storing, or retrieving data in any form or medium)
3 and their employees and subcontractors.

4 2.15 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
6 ATTORNEYS’ EYES ONLY.”

7 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 3. SCOPE

10 The protections conferred by this Order cover not only Protected Material (as
11 defined above), but also (1) any information copied or extracted from Protected
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
13 and (3) any deposition testimony, conversations, or presentations by Parties or their
14 Counsel that might reveal Protected Material, other than during a court hearing or at
15 trial.

16 Any use of Protected Material during a court hearing or at trial shall be
17 governed by the orders of the presiding judge. This Order does not govern the use
18 of Protected Material during a court hearing or at trial.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents, items,
8 or communications for which protection is not warranted are not swept unjustifiably
9 within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions), that the Producing Party affix
26 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
27 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only
28 a portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 A Party or Non-Party that makes original documents available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which documents it would like copied and produced. During the inspection
6 and before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
8 it wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order. Then, before producing
10 the specified documents, the Producing Party must affix the “CONFIDENTIAL”, or
11 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” legend to each page
12 that contains Protected Material. If only a portion or portions of the material on a
13 page qualifies for protection, the Producing Party also must clearly identify the
14 protected portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party identifies
16 on the record, before the close of the deposition as protected testimony.

17 (c) for information produced in some form other than documentary and for
18 any other tangible items, that the Producing Party affix in a prominent place on the
19 exterior of the container or containers in which the information is stored the legend
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
21 ONLY.” If only a portion or portions of the information warrants protection, the
22 Producing Party, to the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive
25 the Designating Party’s right to secure protection under this Order for such material.
26 Upon timely correction of a designation, the Receiving Party must make reasonable
27 efforts to assure that the material is treated in accordance with the provisions of this
28 Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 251 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the Challenging Party to sanctions. Unless the Designating Party has waived
11 or withdrawn the confidentiality designation, all parties shall continue to afford the
12 material in question the level of protection to which it is entitled under the Producing
13 Party's designation until the Court rules on the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party in connection with this
17 Action only for prosecuting, defending, or attempting to settle this Action. Such
18 Protected Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the Action has been terminated, a Receiving
20 Party must comply with the provisions of Section 13 below.

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 "CONFIDENTIAL" only to:

28 (a) the Receiving Party's Outside Counsel of Record in this Action, as well

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary
2 to disclose the information for this Action;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this Action;

5 (c) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) private court reporters and their staff to whom disclosure is reasonably
10 necessary for this Action and who have signed the “Acknowledgment and Agreement
11 to Be Bound” (Exhibit A);

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses, in the
18 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
19 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A); and (2) they will not be permitted to keep any confidential information
21 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal Protected
24 Material may be separately bound by the court reporter and may not be disclosed to
25 anyone except as permitted under this Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.

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1 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
2 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
3 writing by the Designating Party, a Receiving Party may disclose any information or
4 item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
6 as employees of said Outside Counsel of Record to whom it is reasonably necessary
7 to disclose the information for this Action;

8 (b) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) the court and its personnel;

12 (d) private court reporters and their staff to whom disclosure is reasonably
13 necessary for this Action and who have signed the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A);

15 (e) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (f) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information; and

20 (g) any mediator or settlement officer, and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
27 ONLY,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order unless prohibited by law;

2 (b) promptly notify in writing the party who caused the subpoena or order
3 to issue in the other litigation that some or all of the material covered by the subpoena
4 or order is subject to this Protective Order. Such notification shall include a copy of
5 this Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order shall not produce any information designated in this
10 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
11 EYES ONLY” before a determination by the court from which the subpoena or order
12 issued, unless the Party has obtained the Designating Party’s permission, or unless
13 otherwise required by the law or court order. The Designating Party shall bear the
14 burden and expense of seeking protection in that court of its confidential material and
15 nothing in these provisions should be construed as authorizing or encouraging a
16 Receiving Party in this Action to disobey a lawful directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
22 Non-Parties in connection with this litigation is protected by the remedies and relief
23 provided by this Order. Nothing in these provisions should be construed as
24 prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality agreement
3 with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Protective Order
5 in this Action, the relevant discovery request(s), and a reasonably specific description
6 of the information requested; and

7 (3) make the information requested available for inspection by the Non-
8 Party, if requested.

9 (c) If a Non-Party represented by counsel fails to commence the process
10 called for by Local Rules 250.5 and 251, et seq. within 14 days of receiving the notice
11 and accompanying information or fails contemporaneously to notify the Receiving
12 Party that it has done so, the Receiving Party may produce the Non-Party's
13 confidential information responsive to the discovery request. If an unrepresented
14 Non-Party fails to seek a protective order from this court within 14 days of receiving
15 the notice and accompanying information, the Receiving Party may produce the Non-
16 Party's confidential information responsive to the discovery request. If the Non-
17 Party timely seeks a protective order, the Receiving Party shall not produce any
18 information in its possession or control that is subject to the confidentiality agreement
19 with the Non-Party before a determination by the court unless otherwise required by
20 the law or court order. Absent a court order to the contrary, the Non-Party shall bear
21 the burden and expense of seeking protection in this court of its Protected Material.

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Protective Order, the Receiving Party must immediately (a) notify in writing the
26 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
27 all unauthorized copies of the Protected Material, (c) inform the person or persons to
28 whom unauthorized disclosures were made of all the terms of this Order, and

1 (d) request such person or persons to execute the “Acknowledgment and Agreement
2 to Be Bound” (Exhibit A).

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
9 may be established in an e-discovery order that provides for production without prior
10 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
11 parties reach an agreement on the effect of disclosure of a communication or
12 information covered by the attorney-client privilege or work product protection, the
13 parties may incorporate their agreement into this Protective Order.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. No Party waives any right it
18 otherwise would have to object to disclosing or producing any information or item
19 on any ground not addressed in this Protective Order. Similarly, no Party waives any
20 right to object on any ground to use in evidence of any of the material covered by
21 this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 141 and with any pertinent
24 orders of the assigned District Judge and Magistrate Judge. Protected Material may
25 only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. If a Party’s request to file Protected Material
27 under seal is denied by the court, then the Receiving Party may file the information
28 in the public record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in Section 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in
5 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving
8 Party must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned or
11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing any
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4.

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2 14. VIOLATION

3 Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

7 Dated: May 4, 2021

8 LITTLER MENDELSON P.C.

9 /s/Mark A. Romeo

10 Mark A. Romeo
11 Derek S. Hecht

12 Attorneys for Plaintiff
13 R. R. DONNELLEY & SONS
COMPANY

14 Dated: May 4, 2021

15 BUCHALTER, P.C.

16 /s/Dylan W. Wiseman

17 Dylan W. Wiseman
18 Berit Elam

19 Attorneys for Defendant
20 JOHN PAPPAS III

21 **ORDER**

22 For good cause shown and pursuant to the stipulation of the Parties, it is hereby ordered that
23 the Stipulated Protective Order become the order of this Court.

24 IT IS SO ORDERED.

25 Dated: May 5, 2021

26 /s/ John A. Mendez

27 THE HONORABLE JOHN A. MENDEZ
28 UNITED STATES DISTRICT COURT JUDGE

1
2 **EXHIBIT A**

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4
5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under
7 penalty of perjury that I have read in its entirety and understand the Protective Order
8 that was issued by the United States District Court for the Eastern District of
9 California on _____ in the case of R. R. DONNELLEY &
10 SONS COMPANY v. JOHN PAPPAS III, Case No. 2:21-CV-00753-JAM-AC, I
11 agree to comply with and to be bound by all the terms of this Protective Order and I
12 understand and acknowledge that failure to so comply could expose me to sanctions
13 and punishment in the nature of contempt. I solemnly promise that I will not disclose
14 in any manner any information or item that is subject to this Protective Order to any
15 person or entity except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Eastern District of California for the purpose of enforcing the terms of this
18 Protective Order, even if such enforcement proceedings occur after termination of
19 this action. I hereby appoint _____ [print or type full
20 name] of _____ [print or type full address
21 and telephone number] as my California agent for service of process in connection
22 with this action or any proceedings related to enforcement of this Protective Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____